IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 134 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 2 - Appellant(s)
Versus
NAVGHAN JETHABHAI KARAVADARA - Defendant(s)

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Appearance :
MR ND GOHIL AGP for Appellant Nos.1 to 3.
MR CJ VIN for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/11/2006

ORAL JUDGMENT

1. The appeal is admitted for hearing the parties on the following substantial question of law;

Whether the Civil Court could grant a decree in favour of the appellant even after the

judgment of this Court in Special Civil Application No.4831 of 1997 decided on 7/8/2002?

2. With the consent of the parties, the matter is finally heard.

3. The present respondent – plaintiff filed a civil suit for a declaration that his services be deemed to be continued and an injunction that he be not removed from services. The Civil Court granted injunction after bi-parte hearing observing that so long as the vehicle is available on the dam site, the respondent - plaintiff may continue, but if the vehicle is withdrawn, his services would come to an end. It appears that during the currency of the interim injunction, the plaintiff's services were terminated, therefore, he filed the proceedings under Order 39 Rule 2(A) of the Code of Civil Procedure. During the pendency of the suit, the present plaintiff made an application for reference which was registered as Reference (LCJ) No.1936 of 1990. After recording the evidence and hearing the parties, learned Labour Court held that the present plaintiff was entitled to retrenchment allowance

and not to the relief of reinstatement. The submission of the learned counsel for the appellants is that these facts were not brought to the notice of the Civil Court and the parties proceeded with the trial.

4. The trial court decreed the suit and, thereafter, Regular Civil Appeal No.11 of 1993, at the instance of the present appellant, was dismissed on 4/12/2004, therefore, the State is before this Court.
5. Mr.N.D. Gohil, learned Assistant Government Pleader for the appellants – State on the premises aforesaid submits that once the High Court has confirmed the order passed by the Labour Court, then no subordinate court could grant a decree in favour of the present plaintiff. Referring to the judgment dtd.7/8/2002 delivered by this court in Special Civil Application No.4831 of 1997, it is contended that the plaintiff would not be entitled to any relief.

6. Mr.Vin, learned counsel for the plaintiff - respondent, however, submits that the scope of the proceedings was different and in any case, the trial court has not acted illegally or arbitrarily.

7. The plaintiff who had filed the present suit, undisputedly had filed Reference (LCJ) No.1936 of 1990. The said proceedings were filed before the competent court and any judgment by such competent court would become res-judicata between the parties. If the said judgment of the Labour Court has been affirmed by this High Court in Special Civil Application No.4831 of 1997, then no subordinate court could grant any relief contrary to the order passed by the High Court. Under the circumstances, I must hold that after the disposal of the labour court's matter, the plaintiff would not be entitled to a decree in his favour either for reinstatement or for any other relief. He would only be entitled to retrenchment allowance, which has been ordered in his favour by the Labour Court.

8. The appeal deserves to and is accordingly allowed. The impugned judgment and decree delivered by the two courts, in the premises aforesaid, are set aside. The suit is dismissed. But, it is, however, made clear that the present plaintiff would be entitled to the retrenchment allowance as directed by the Labour Court. In case, the State Government, which is vigilant enough to file this

Second Appeal, has not paid the retrenchment allowance to the respondent, then on an application by the present plaintiff, shall pay the retrenchment allowance and in case, such allowance is not paid, the plaintiff would be entitled to execute the order passed by the Labour Court.

9. Let a decree be framed accordingly.

(R.S. GARG,J.)

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